Before the

DEPARTMENT OF COMMERCE
NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION
and the
DEPARTMENT OF AGRICULTURE
RURAL UTILITY SERVICE

Washington, D.C. 20230

In the Matter of	)	
	)	
Implementation of Section 6001 of the American	)	
Recovery and Reinvestment Act of 2009	)	
	)	
Implementation of Title I of the American	)	Docket No. 090309298-9299-01
Recovery and Reinvestment Act of 2009	)	

COMMENTS OF THE CITY AND COUNTY OF SAN FRANCISCO

MAYOR GAVIN NEWSOM

CHRIS A. VEIN
Chief Information Officer
BRIAN ROBERTS
Senior Policy Analyst
EMY TSENG
Project Director, Digital Inclusion Programs
BARRY FRASER
Telecommunications Policy Analyst
Department of Technology
1 South Van Ness Avenue
2nd Floor
San Francisco, CA 94103
Telephone: (415) 581-4001
E-mail: Chris.Vein@sfgov.org

April 13, 2009

TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY

The City and County of San Francisco ("San Francisco") respectfully submits the following comments in response to the National Telecommunications and Information Administration ("NTIA") Request for Information ("RFI") for implementation of Title I and Section 6001 of the American Recovery and Reinvestment Act of 2009 ("ARRA"). San Francisco applauds the federal government's efforts in the ARRA to invest in the technological future of the country by bringing the benefits of broadband Internet to all Americans and its intention to invest in the technological future of the country.

San Francisco welcomes the opportunity to submit comments to help guide the NTIA in crafting the rules and procedures for the Broadband Technology Opportunities Program ("BTOP"). San Francisco is uniquely positioned as a pioneer in efforts to bring the benefits of broadband Internet access to all of its residents - particularly to the City's underserved and vulnerable populations. San Francisco has undertaken pilot projects to address the digital divide that exists within our city where the Internet adoption rate of certain populations – low income communities of color, public housing residents, limited English speaking immigrants, disabled and elderly – lag far behind the population as a whole. For example, San Francisco deployed the City's fastest residential broadband network together with computer training in a public housing development. We have piloted a computer refurbishing program with nonprofit workforce development partners that puts low cost computers into the hands of low-income consumers, diverts e-waste from the waste stream, and trains people in computer repair and maintenance. We also provide free Internet access and access to online databases and resources through 640 public computers located throughout all San Francisco library facilities, as well as free wireless access. In addition, San Francisco has deployed fiber networks that support educational institutions, such as City College of San Francisco and nonprofit multimedia centers.

Given San Francisco's experience in providing broadband infrastructure and adoption programs, the City recommends that the NTIA consider the following factors as it crafts the BTOP rules:

- NTIA should not apportion specific funding allocations to any one purpose listed in ARRA (other than those already established in the statute). Applicants submitting

proposals that address multiple purposes should receive priority in the evaluation process.

- States may have an advisory, but not a dispositive role in the evaluation process. The NTIA should only consider state advice if the advice is based on a fair and tranparent process that adheres to the BTOP grant criteria.

- NTIA should adopt detailed scoring standards to reflect the BTOP evaluation criteria; such scoring standards should accommodate the differences between infrastructure, demand, and public safety projects. To that end, San Francisco has proposed a comprehensive scoring template, described in Section V below.

- Computer center grants should go to programs that are scalable, community relevant, and sustainable. Local governments have a unique ability to coordinate these programs because of their on the ground experience and ability to aggregate programs.

- The cost of Internet access is just one of many barriers to adoption for underserved communities. Funding should go to broadband adoption programs that clearly identify the target populations and strategies to address barriers to adoption.

- Broadband mapping projects should collect broadband adoption rates by geography and demographics and make this information public.

- Nonprofit organizations and government entities should be able to apply in kind resources to meet the 20% match requirement.

- In the context of the ARRA, waste is the failure to execute innovative projects. A project should be considered wasteful if resources are not used in support of an approved project plan; not because they take innovative risks that do not result in immediate success.

- The following definitions should be adopted: (1) “unserved areas” should be defined as areas where broadband is unavailable or insufficient; (2) “underserved areas” should be defined as areas where adoption rates are low; and (3) “broadband” should be defined to reflect both a measure of current offerings and a goal for funded projects.

- The terms “unserved” and “underserved” should not apply to community anchor institutions, such as libraries, that traditionally serve unserved and underserved members of their communities.

- Nondiscriminatory access means that any user can (1) attach compatible devices to the network using standard interfaces, subject only to minimal "do-no-harm"

requirements; and (2) reach any web site, post any information, provide any service, access or provide any application, without degradation, prioritization or interference by the network operator. In addition, non-discriminatory access means that service and content providers not affiliated with the network operator or owner can receive access at a technically and economically feasible point on rates, terms, and conditions that do not discriminate based on the requestor's relationship with the network operator.

These recommendations are described in more detail in the sections that follow. Please note that San Francisco has not attempted to respond to each and every RFP question. Instead, we have focused our responses on the questions that we believe to be most critical to the success of the BTOP.

II. ANSWER TO QUESTION 1: NTIA SHOULD NOT APPORTION SPECIFIC FUNDING ALLOCATIONS TO ANY ONE PURPOSE LISTED IN ARRA (OTHER THAN THOSE ALREADY ESTABLISHED IN THE STATUTE); APPLICANTS THAT ADDRESS MULTIPLE PURPOSES SHOULD RECEIVE PRIORITY.

In the RFI, NTIA asks whether "a certain percentage of grant funds [should] be apportioned to each category" of purpose listed in Section 6001 of the ARRA.[1] San Francisco believes that, subject only to the "not less than" appropriation provisions of the ARRA, NTIA should not apportion any specific amount of funding to any one purpose contained in Section 6001 of the ARRA. Instead, NTIA should encourage the widest possible range of applicants and projects for BTOP funding. By keeping available funds flexible to the extent allowed by the ARRA, NTIA will encourage maximum participation. In addition, any limitations on funding for a particular purpose could effectively preclude NTIA from funding the types of innovative approaches and programs that are specifically sought by Congress through the ARRA.

NTIA also asks whether applicants should be encouraged to address more than one purpose set forth in Section 6001. San Francisco believes that applicants should be encouraged to submit proposals that address multiple purposes, and that such applications should receive priority in the evaluation process. We describe a scoring methodology to assign priority to multiple purpose proposals in Section V below.

[1] 74 Fed. Reg. 10717 (March 12, 2009) *citing* Pub. L. 111-5 § 6001(b) (Feb. 17, 2009). Unless otherwise identified, all references to "RFI" or "Questions" refer to this citation.

III. ANSWER TO QUESTION 2: STATES MAY HAVE AN ADVISORY, BUT NOT A DISPOSITIVE ROLE; NTIA SHOULD ONLY CONSIDER STATE ADVICE IF THE ADVICE IS BASED ON A FAIR AND TRANPARENT PROCESS THAT ADHERES TO THE BTOP GRANT CRITERIA.

A. Under ARRA, States May Have an Advisory, But Not a Final Decision-Making Role.

ARRA reserves for NTIA the sole authority to approve grant awards. As the Conference Report makes clear, "The Conferees therefore expect and intend that the NTIA, at its discretion, will seek advice and assistance from the States in reviewing grant applications, as long as the NTIA retains the sole authority to approve the awards." H.R. Conf. Rep. No. 111-16, p. 775. At the same time, ARRA permits NTIA to consult with a state regarding the identification of unserved and underserved areas and regarding the allocation of grant funds within the state. § 6001(c). Therefore, while NTIA may solicit the states' advice as NTIA reviews grant applications, NTIA should not allow the states to a veto a project or to otherwise determine whether a project should be approved.

B. States that Have Submitted Grant Applications Should Not Be Allowed To Offer Advice in that Grant Round.

In a particular grant application round, if a state is directly competing with other grant applicants by applying for grant funds that would flow to the state treasury, the state has a conflict of interest and should not be allowed to advise NTIA in that round. In such a situation, it would not be sufficient for the state to simply refrain from recommending its own application(s). A state could increase the chances that its application(s) will succeed by offering unfavorable evaluations of competing applications from the state. To prevent even an appearance of such a conflict of interest, NTIA should issue a rule that it will not accept advice from a state that has submitted a grant application.

C. States, Especially Large States, May Have Limited Knowledge of Local Broadband Challenges, Particularly Which Communities Are Underserved and Why.

Some state governments may be able to offer NTIA useful advice about which project proposals in that state best promote Congress' objectives in ARRA and comport with federal and state initiatives to expand broadband service. Particularly in smaller states, the state government may have a thorough knowledge of broadband availability and adoption rates in communities throughout the state, as well as an understanding of local efforts to address broadband problems.

In many larger states, however, local governments will likely have a more thorough understanding of the needs of their communities. For example, through various city-specific surveys and studies, San Francisco has detailed information regarding the extent to which its residents and businesses are underserved, such as broadband adoption rates in various San Francisco communities; reasons for non-adoption among communities with low adoption rates; and speed of available broadband options. Although some states have made important efforts to collect statewide broadband data, they may not have (and cannot reasonably be expected to collect) such detailed information about potentially underserved communities, especially in major urban areas.

Ultimately, broadband service is provided at the community level. Local governments are often in a better position than state agencies to understand the broadband needs of local communities, to know what projects and programs have worked or not worked, and to design new projects that will meet their communities' needs.

D. Because State Public Service Commissions Generally Regulate Only Private Service Providers, They Have Limited Knowledge of Broadband Efforts by Local Governments.

While a state can be presumed to have thorough knowledge regarding state-level initiatives and privately-financed plans to expand broadband service, that state cannot be expected to be fully informed regarding local governmental efforts to expand broadband opportunities, particularly in a state as large and diverse as California. In fact, states may often have limited knowledge of potential providers. Through state public service commissions, which generally regulate only private providers, states may have detailed knowledge of private efforts to deploy broadband, but they may lack any in-depth knowledge of municipal broadband and nonprofit projects. Because of the state commissions' limited jurisdiction and focus on the private entities they regulate, they may not fully appreciate the important contributions that municipal or nonprofit projects can make to improving broadband service.

E. NTIA Should Only Consider State Advice to the Extent that the Advice is Based on a Fair and Transparent Process that Strictly Adheres to the BTOP Grant Criteria.

Before NTIA seeks a state's advice regarding competing grant applications from that state, NTIA should determine whether the state has conducted its analysis of the competing applications in a process that is fair, inclusive, and transparent. To the extent a state cannot demonstrate that its process

meets these values, NTIA may jeopardize the integrity of the grant program if it accepts the advice from that state.

In the interest of saving time, states may be interested in taking advantage of existing broadband programs in order to expeditiously gather BTOP grant applications. Reliance on such programs would be unfair if those programs were not open to all entities that are eligible for BTOP grants. A state that wishes to use an existing grant program to prioritize applications risks unfairness to the BTOP grant applicants to the extent that the state program's grant criteria differ from the final criteria that NTIA adopts.

For example, the State of California has indicated an intention to submit applications that qualify for broadband infrastructure funding under the California Advanced Services Fund (CASF), a grant program created by the California Public Utilities Commission (CPUC). However, only private providers regulated by the CPUC are currently eligible for CASF grants. It would be unfair to allow a state to give priority to applications that qualify for such an eligibility-restricted state program.

Even if the program were open to all providers allowed under the NTIA criteria, the state may be inclined to favor the current recipients of state funds for a variety of reasons, including existing working relationships. It would be unfair for entities with strong BTOP applications to be disfavored because they did not have the opportunity to work with the state in the past.

Finally, for NTIA to assure itself and the public that a state's recommendations are the result of a process that is both fair to all grant applicants and consistent with the BTOP eligibility and selection criteria, the state's process must be fully transparent. NTIA should require a state to show through the public record all of the steps that it took to solicit, review and, if requested by NTIA, evaluate applications. Each state that advises NTIA should be required to show that its eligibility and evaluation criteria match the BTOP criteria. Finally and most important, states should also provide the NTIA, the grant applicants, and the general public any scores or recommendations that they share with NTIA. If scores are used, the aggregate scores should be broken down by scoring category to afford applicants and the public a full opportunity to assess the fairness of the state evaluation process.

IV. ANSWER TO QUESTION 3: A PROJECT PROPOSED BY A PRIVATE ENTITY SHOULD NOT BE FOUND TO SATISFY THE PUBLIC INTEREST STANDARD UNLESS THE APPLICANT DEMONSTRATES SPECIFIC AND MEASURABLE PUBLIC INTEREST BENEFITS.

Under section 6001(e)(1)(A) and (B) of the ARRA, states, local governments, the District of Columbia, Indian tribes, native Hawaiian organizations, and the listed types of nonprofit organizations are all automatically eligible for BTOP grants. Under section 6001(e)(1)(C) of the ARRA, other non-specified entities, including private, for-profit broadband providers, are eligible only if NTIA, by rule, finds their eligibility to be in the public interest.

It has been suggested that the ARRA Conference Report evidences Congressional intent not to require any meaningful public interest requirement for private providers. Such an interpretation is neither borne out by the Conference Report, nor, more importantly, by the text of the legislation. The Conference Report states that "as many entities as possible" (including various types of enumerated private service providers) should be eligible to apply, but with the proviso that such eligibility be "consistent with the public interest and the purposes of this section." H.R. Conf. Rep. No. 111-16, p. 775. The Conference Report is consistent with and reinforces the plain language of the ARRA, which requires that private providers and other non-specified entities satisfy a public interest standard to be determined by NTIA.

In fashioning a public interest standard, the NTIA should look to the differences between the specified entities and the non-specified entities. The common characteristic uniting the governmental, tribal, and non-profit entities that are automatically eligible for BTOP grants is that their goal is to serve the public interest in some fashion. In contrast, private service providers, however well-intentioned and public-minded, have as their main objective the pursuit of profit. Because of these different motives, Congress wanted NTIA to ensure that, when private providers receive grants funded with taxpayer dollars, the efforts of such private entities are fully consistent with the public interest.

Therefore, the NTIA should require, as a prerequisite to non-specified entity participation in the BTOP, that the entity demonstrate specific and measurable public interest benefits that will flow from the proposed project. In addition, failure to achieve such benefits should be grounds for NTIA de-obligation of funding for the proposal.

V. ANSWER TO QUESTION 4: THE NTIA SHOULD ADOPT DETAILED SCORING STANDARDS TO REFLECT THE BTOP EVALUATION CRITERIA; SUCH SCORING STANDARDS SHOULD ACCOMMODATE THE DIFFERENCES BETWEEN INFRASTRUCTURE, DEMAND, AND PUBLIC SAFETY PROJECTS.

The ARRA requires the NTIA to include numerous goals and requirements in its selection criteria. To promote fairness and uniformity in reviewing grant applications, NTIA should incorporate these selection criteria into detailed scoring standards. In this section, San Francisco suggests a comprehensive scoring framework that will fully promote the purposes of the ARRA. An important feature of San Francisco's proposed scoring framework is that it recognizes that, in certain respects, different types of projects – infrastructure, demand, and public safety – should be evaluated under different criteria.

A. Overview of Recommended Scoring Framework

San Francisco recommends the following scoring framework:

CRITERIA	MAXIMUM SCORE
1. Meets Threshold Eligibility Criteria	PASS/FAIL
2. Identifies Problem that Meets One or More Statutory Purposes of §6001(b)	10 points
3. Quality of the Project • Quality of analysis of the problem • Quality of solution to the problem o Infrastructure projects: §6001(h)(2) o Demand projects o Public safety projects • Efficiency and cost-effectiveness • Ongoing benefits • Measurable impact	45 points
4. Capacity of the Applicant • Previous experience in addressing disparity in access or services, working with target populations or providing similar services • Prior successes in implementing similar projects • Leveraging existing programs, resources or funding • Support or commitment from strategic community partners • Project is "shovel ready"	30 points
5. Accountability and Transparency	10 points
6. Assists Disadvantaged Small Business	5 points
TOTAL POSSIBLE POINTS	**100 POINTS**

We describe and explain each of these proposed scoring standards below.

B. Standard No. 1: Meets Threshold Eligibility Criteria (Pass/Fail)

ARRA provides several threshold requirements that must be met in order for a grant application to be eligible for an award:

- The applicant must be either: (1) an eligible entity under Section 6001(e)(1)(A) or (B); or (2) an entity that satisfies the public interest test required by section 6001(e)(1)(C). Above, in response to question 3, San Francisco recommends that a private provider would satisfy the public interest test if it demonstrates that the local government for the area that would be affected by the project finds it to be in the public interest.

- The applicant demonstrates that the project would not have been implemented during the grant period without federal grant assistance. Section 6001(e)(3). While this is an important and statutorily mandated requirement, NTIA should not make this requirement onerous by demanding prohibitive evidentiary showings.

- The applicant must either: (1) meet the matching requirement of section 6001(f); or (2) request a waiver and demonstrate that the applicant is entitled to a waiver.

- The application must seek grant funding for one of the types of projects set forth in section 6001(g).

- The applicant must affirm that it will comply, at a minimum, with the prescribed non-discrimination and network interconnection obligations. Section 6001(j).

NTIA should conduct an initial review of all BTOP grant applications to determine whether they meet all of the foregoing requirements. Applications that fail to meet all of these eligibility criteria should be rejected.

C. Standard No. 2: Identifies a Problem that Meets One or More Statutory Purposes (10 Points)

Once the Application has been determined to meet all threshold criteria, the NTIA should next determine whether the application has identified a specific problem that falls squarely under one or more of the following express purposes of section 6001(b):

1. Provide access to broadband service to consumers residing in unserved areas;

2. Provide access to broadband service to consumers residing in underserved areas;

3. Provide broadband education, awareness, training, access, equipment, and support to specified entities;

4. Improve access to, and use, of broadband service by public safety agencies; and

5. Stimulate the demand for broadband, economic growth, and job creation.

NTIA's scoring for this category should award applications up to three points for meeting either of purpose numbers 1 or 2, but not both (Congress clearly intended that an area could be either unserved or underserved, not both), up to three points each for meeting purpose numbers 3 and 4, and one point for meeting purpose number 5 (a critical purpose but one that most applications should

easily satisfy and therefore will not significantly differentiate among applications). Under this schedule, an applicant may receive a total of 10 points for a proposal that addresses purposes 1 or 2, 3, 4, and 5.

San Francisco agrees with the comments of NATOA and others[2] that underserved areas should be treated the same as unserved areas. Congress made clear that each of the five listed goals of this portion of the ARRA is intended to be coequal in importance, with no one goal warranting special attention. NTIA should award sufficient funding to support projects in underserved areas, where innovative programs are more likely be tried and tested, so that going forward there is a better understanding of what approaches are most likely to succeed.

D. Standard No. 3: Quality of the Project (45 Points)

For this standard, applications should be scored within a range of points for each of the following five considerations, depending on how well they address each one.

1. Quality of the Analysis of the Problem – 10 points

The application should be scored based on how clearly it defines the problem, using as many available facts and data as possible. The application should identify the current barriers to broadband use (e.g., unavailability, cost, speed, digital literacy, language, culture) that the application seeks to address. With respect to public safety-related projects, the application should explain the deficiencies of the current public safety communication facilities that would be improved by the proposal.

2. Quality of the Solution to the Problem – 20 points

Applications should be categorized as Infrastructure Projects, Demand (adoption) Projects or Public Safety Projects, and be evaluated according to the specialized criteria for each type of project described below. In addition, applications that effectively integrate solutions across two or more of these categories should receive additional points.

This will allow the NTIA to give priority to applications that propose innovative projects that offer multi-pronged solutions. This approach would appropriately benefit infrastructure projects that

[2] Consolidated Community Comments of the National Association of Telecommunications Officers And Advisors (NATOA), submitted April 10, 2009 (NATOA Comments).

offer next-generation broadband speeds, combined with outreach programs to enable vulnerable populations to take advantage of the advanced service (such as health services for at-risk seniors or distance learning services for children).

a. Infrastructure Projects

For infrastructure projects, Section 6001(h)(2) identifies the following factors as standards that NTIA should use to evaluate the quality of the proposals.

- Increase affordability and subscribership to the greatest population of users in the area.
- Provide the greatest broadband speed possible to the greatest population of users in the area.
- Enhance service for health care delivery, education, or children to the greatest population of users in the area.
- Not result in unjust enrichment as a result of support for non-recurring costs through another Federal program for service in the area.

It should be noted that the unjust enrichment language in section 6001(h)(2)(D) applies to non-recurring costs. NTIA should encourage applicants to demonstrate how support for the *recurring* costs resulting from the provision of broadband service will be sustained, whether by budget appropriation, government support, or other sources of funding. NTIA should recognize public libraries' and schools' participation in the Universal Service Fund's E-rate program as an appropriate source for sustaining financial support for broadband service.

San Francisco supports the NATOA Comments regarding the importance of retail price and speed in the evaluation of infrastructure projects. Projects that are most likely to succeed will require affordability to be a key focus. Affordability should be considered from the perspective of not only the total cost to deploy the proposed network, but also the proposed retail cost of service that will be passed on to consumers. Keeping price points within a range that is affordable to consumers and small businesses is vitally important. Projects that promise to bring broadband service to consumers and local businesses at lower costs than available from incumbent suppliers should receive priority.

The actual speed of a proposed network at peak usage times should be given significant weight in evaluating infrastructure projects. This evaluation should take into account both download and upload speeds, since many of the applications involved in telemedicine, telework and distance learning require high symmetrical speeds.

Any evaluation of speed, however, must be considered in light of the proposed technology to be deployed. While certain technologies have advantages regarding speed, capacity, and scalability, other technologies will be inherently less expensive to install and have the potential to provide accessibility beyond the scope of a different solution. To ensure that approved projects cover the widest possible range of purposes and populations, the NTIA should remain technology neutral. The NTIA should evaluate infrastructure proposals according to the identified needs of the area to be served, the fit of the technological solution to meet those needs, and the proposed speed of the network.

b. Demand Projects

San Francisco's experience in fostering digital inclusion with limited resources suggests the following as important factors for judging the quality of demand projects:

- Clearly identify the target populations for the program and the barriers to adoption that exist for these populations. Ideally the selection of targeted populations would be data driven.
- Address multiple barriers to adoption (e.g., computer access, technical support, digital literacy, Internet safety, language / culture, accessibility)
- Identify partnerships with multiple agencies and institutions (e.g., nonprofits, schools, workforce, social service)
- Demonstrate that the applicants have proven success in expanding broadband adoption within targeted unserved and underserved communities.
- Demonstrate a contribution to workforce development – for example, that the project will be effective in increasing employment opportunities and skills.

Additional factors worthy of consideration when evaluating demand projects are discussed in Sections VI and VII below.

c. Public Safety Projects

The ARRA does not contain any express criteria for public safety projects. Based on San Francisco's experience, both in its own right and as the lead agency in developing a regional interoperable communications network, San Francisco proposes that the following factors be used to evaluate BTOP public safety applications:

- Meet identified public safety needs.
- Identify the number and types of public safety users and the geographic area to be served.
- Meet "public safety grade" reliability, hardening, and coverage requirements.
- Foster regional collaboration and identify benefits for regional public safety users beyond the project's geographic area.
- Advance local, regional and national interoperability.
- Be affordable for public safety users.

3. Efficiency and cost-effectiveness – 5 points

This standard will evaluate how well the proposed project makes efficient use of available resources, including BTOP funds, and whether the proposed area or population to be served is appropriately sized and scaled. Cost-effectiveness, however, cannot be separated from quality of service factors, such as speed, reliability and coverage. San Francisco does not support a lowest cost-per-customer criterion because it would promote "lowest common denominator" projects that risk placing a priority on inferior services that reach a large number of customers. We believe that such projects, while potentially capable of generating high profits for the operator, do little to serve the public interest.

4. Ongoing Benefits – 5 points

This standard will evaluate the project's sustainability – i.e., will it provide enduring services or other benefits that will remain valuable long into the future? Networks built using NTIA grant funding should be as future-proof as possible. If this program is truly a down payment on our broadband future, the networks built today should not become outdated in only a couple of years. The

proposal should also demonstrate that the network is scalable – capable of expansion to a larger area or community – and has a potential value as a model for other communities.

A key factor in evaluating the ongoing benefits of a project will be the applicant's project evaluation metrics and methodology for data collection and analysis. Applicants should demonstrate a detailed and comprehensive plan for metrics and data collection, capable of supporting a going-forward evaluation of the sustainability, scalability, and replicability of the project.

5. Measurable Impact -- 5 points

This standard will evaluate the extent of the measurable impacts from the project that the applicant is able to demonstrate. The key questions that should be considered are:

- How many persons will the proposed project directly benefit?
- Does the application demonstrate that the proposed project is likely to create a significant number of sustainable jobs?
- Does the application demonstrate the ancillary economic benefits of the proposed project to the community, including institutional and small business members of the community, that go beyond the target populations specified in the statute.

E. Capacity of the Applicant (30 Points)

This standard will evaluate the applicant's previous experience in addressing disparity in access or services, and relative success, given the resources available. The following factors should be considered:

- Does the applicant demonstrate significant previous experience in addressing disparity in access or services, working with target populations or providing similar services?
- Does the applicant document prior successes in implementing similar projects, given the resources available?
- Are existing programs, resources or funding identified that can be leveraged to complete the proposed project?
- Has the applicant demonstrated the support or commitment of strategic community partners that will enhance the viability of the project?

- Has the applicant demonstrated that the proposed project is "shovel ready," i.e. that it will begin shortly after award of a grant and be completed within two years of the award?

F. Accountability and Transparency (10 Points)

The NTIA scoring criteria should include an assessment of the means by which the applicant proposes to monitor the progress of the project and to measure its impact. Applicants may be awarded up to 10 points for a detailed accountability and transparency plan. This plan should include a schedule of regular reports and updates to the NTIA regarding progress toward completion, as well as a plan for real time publication of such reports and all other relevant materials for public inspection (for example, on a web site).

G. Assists Disadvantaged Small Business (5 Points)

Section 6001(h)(3) of the Act provides that the NTIA shall "consider whether the applicant is a socially and economically disadvantaged small business concern" as defined in the Small Business Act (15 U.S.C. §637). Applications should be awarded up to 5 points based on the degree to which the applicant satisfies this standard.

H. Factors That Should Be Given Little Weight

We believe that certain factors should be given little, if any, weight. As discussed above, San Francisco does not support a lowest cost-per-customer criterion. Likewise, the extent to which private investment is displaced is not a statutory consideration. It should not be counted against an applicant, especially if the application provides credible evidence that privately-funded broadband networks have not been used to reduce the disparity in service for the unserved or underserved populations.

San Francisco agrees with NATOA and others that state priority determinations should not be outcome determinative, nor should NTIA give states the ability to favor projects that more neatly fit within a state's own broadband scheme. If NTIA chooses to consult with individual states, it should give only slightly more weight to those projects identified by a state government as priority projects – striking a balance between acknowledging the real needs of a community and maintaining a wide open application process that allows every applicant to participate on a level playing field.

VI. ANSWER TO QUESTION 6: COMPUTER CENTER GRANTS SHOULD GO TO PROGRAMS THAT ARE SCALABLE AND SUSTAINABLE; LOCAL GOVERNMENTS HAVE A UNIQUE ABILITY TO COORDINATE SUCH PROGRAMS.

A. The Designated $200 Million in BTOP Funds for Computer Centers Should Focus on Programs that Are Scalable, Community Relevant, and Sustainable.

San Francisco recognizes the key role that public computer centers have in providing basic access and digital literacy training to its disadvantaged residents. Attendance at these centers often serves as a necessary intermediary step to residents acquiring their own computer and broadband service at home. In San Francisco, these centers are located in libraries, schools, recreation centers, and the community college, as well as at nonprofit organizations providing housing, social services, workforce development, after-school and arts programming.

Expanding the capacity of computer centers requires more than simply deploying computers and Internet access at these sites. In the past decade, many computer centers nationwide have opened. Unfortunately, may have also closed or are relatively underutilized because the operators lack the ongoing operational and programmatic skills and ties to the surrounding community. In San Francisco, the most successful computer centers are rooted in the local community. They are run by local organizations that offer educational, social, and workforce development programs to targeted underserved populations. Therefore, this funding should go to computer centers and technology training programs that are:

Scalable: Programs that serve multiple sites and can be replicated across different locations and target populations.

Community Relevant: Programs that target their training to the needs of diverse communities and vulnerable populations.

Sustainable: Programs that build overall technical capacity within the community through local hiring, internships, train-the-trainers, entrepreneurship, etc. so that the community can eventually serve its technological needs.

Given these considerations, funding priority should be given to programs that:

- Provide high speed broadband to accommodate interactive, bandwidth-intensive online educational programs, job and skills training programs and e-government services.

- Have a proven record of success in meeting the technology needs of targeted populations, and preferably have computer center usage data and measurable outcomes of previous efforts.
- Provide training and services to populations with especially low rates of broadband adoption (e.g., disabled, non-English speaking, elderly).
- Provide training programs that focus on developing basic digital literacy and Internet safety skills among underserved and vulnerable populations.
- Integrate computer centers and training into existing social service, educational, health and workforce development programs that already work with the targeted populations.
- Expand the capacity of multiple computer center sites and partner organizations.
- Articulate a clear strategy to provide ongoing technical and program support.
- Use computer centers to provide training in workforce skills and hire community members to provide services (e.g., technical support, training).
- Hire community members to provide technical support, training, etc.
- Leverage existing resources (e.g., volunteers, in kind donations, other program funding, donated equipment and software).

There is also a great need to address the capacity of existing public computer centers to serve their client populations. A large part of these grants should focus on building the programmatic and operational capacity of existing computer centers, including:

- Training and professional development of computer center managers.
- Technical support for computer centers.
- Volunteer placement into the computer centers (volunteers provide technical support, computer training and tutoring).
- Training the trainer and curriculum sharing.
- Translating curriculum and materials into multiple languages.
- Advanced training programs (multimedia, computer technician) that are taught at multiple nonprofit and community sites.

- Distribution of resources such as equipment and software to computer centers.

B. Local Governments Have Unique Advantages for Coordinating Public Computer Centers and Training Programs.

Computer centers at libraries and community colleges play an important role in providing public access to technology. Many people rely especially on libraries for their Internet access. However, these institutions often are limited in the services they offer. Libraries need to limit the amount of time people can use the computers. They do not have the capacity, space, or funding to offer technical training. Community colleges have the training capacity, but people from vulnerable populations often do not have the skills to take their courses. Many San Francisco residents, for example, are too intimidated to sign up for City College courses because they don't know how to navigate the registration website.

Libraries can serve as community anchor institutions by expanding their public computing services through innovative programs such as providing in-library laptops for loan, free wireless internet access, and creating mobile laptop computer labs.

Many successful computer labs are located in community-based and neighborhood organizations. Unfortunately, many of these organizations are too small to apply for federal funding.

Local governments can play a unique role in coordinating these programs to reach vulnerable populations. Cities are close enough to the ground to reach and provide services for underserved and diverse communities which are harder for national or statewide programs to reach. They are also large enough to aggregate funding and coordinate programs across multiple agencies and institutions (nonprofits, schools, libraries, and community colleges). In addition, cities have existing mechanisms in place to provide infrastructure and programs and to redistribute grant funding.

Cities such as San Francisco, Riverside, Minneapolis, Seattle, and Boston have taken the lead in implementing citywide pilot programs that work with computer centers in libraries, schools, and at nonprofit organizations. These programs, however, have been hampered by the lack of funding and support. BTOP funding would enable these cities to further their role as innovators and take their programs to scale.

VII. ANSWER TO QUESTION 7: COST OF INTERNET ACCESS IS JUST ONE OF MANY BARRIERS TO ADOPTION FOR UNDERSERVED COMMUNITIES.

A. Funding Should Go to Broadband Adoption Programs that Clearly Identify the Target Populations and Strategies to Address Barriers to Adoption.

In San Francisco, we have found that the cost of Internet access is only one barrier to adoption by low income and disadvantaged populations. Other major barriers include: cost of computers, lack of technical support (particularly in non-English languages), lack of digital literacy skills, mistrust/fear of the Internet (e.g., viruses, financial scams, children's safety).

Given this experience, we recommend that funding priority be given to programs that:

- Clearly identify the target populations and the barriers to adoption that exist for these populations. Ideally the selection of targeted population would be data driven.
- Have proven success in expanding broadband adoption within targeted unserved and underserved communities.
- Address multiple barriers to adoption (computer access, technical support, digital literacy, Internet safety, language / culture, accessibility)
- Work in partnership with multiple agencies and institutions (nonprofits, schools, workforce development organizations, social services, etc.)
- Provide multilingual and accessible services.

B. Programs Should Measure Broadband Adoption Rates in Targeted Communities at the Beginning and End of the Programs and Data Collection Should be Funded As Part of the Grant.

Ideally there should be some measure of adoption rates in the targeted communities at the beginning and end of the programs. Because this can be expensive, data collection should be funded explicitly as part of the grants. Also, NTIA funded broadband mapping research should collect adoption rates in targeted unserved and underserved populations. This data should be made available to grant recipients to measure their progress.

Funded programs should be required to collect metrics on number of people served and trained, including usage metrics. Applicants should describe the methodology for collecting such data as part of the application process.

VIII. ANSWER TO QUESTION 8: BROADBAND MAPPING PROJECTS SHOULD COLLECT BROADBAND ADOPTION RATES BY GEOGRAPHIC AREA AND DEMOGRAPHICS AND MAKE THIS INFORMATION PUBLIC.

NTIA funded broadband mapping projects should collect information about adoption rates by geographic area and demographics (income, race/ethnicity, gender, etc). NTIA must collect demographic information in order for programs to target vulnerable populations. In addition, the Department of Commerce should add questions about broadband adoption and home computer usage to the 2010 Census. San Francisco collects Internet and computer usage data as part of its biennial City Survey. This information has been extremely useful in prioritizing neighborhoods and populations for our broadband access and adoption programs.

Alternatively, adoption data could be collected by surveys similar to the Pew Internet or Public Policy Institute of California reports on Californians and Information Technology, but at a finer level of granularity. Grantees should have access to the underlying adoption data from these mapping projects to provide baseline data and to track the progress of their own programs. This data should also be made available to researchers who seek to conduct further analysis of broadband adoption across geographic areas and demographic groups, as well as comparative studies of different program approaches.

IX. ANSWER TO QUESTION 9: NONPROFIT ORGANIZATIONS AND GOVERNMENT ENTITIES SHOULD BE ABLE TO APPLY IN-KIND RESOURCES TO THEIR 20% MATCHING REQUIREMENT.

Nonprofit organizations and government entities should be allowed to apply in-kind resources to their 20% matching requirement. Examples of in kind-resources include staffing, equipment, software, and volunteer hours. Allowing this type of in-kind match is standard for foundations and other grantmaking institutions. Requiring cash for the 20% match would preclude many local governments and nonprofits from applying for funding. In this economy, public and foundation funding available to nonprofits and government entities is extremely limited. In addition, the proposed timeframe of the application process allows only limited time to obtain funding from foundations.

X. ANSWER TO QUESTION 10: THE NTIA MUST BALANCE A QUICK PROCESS WITH A FAIR PROCESS

San Francisco recognizes that the NTIA faces a considerable challenge in balancing the necessity for a fair and open process, while creating a new program and addressing a national problem in a short timeframe. The only way to ensure a fair and effective process is to ensure that the NTIA's evaluation and all evaluative input are consistent with clearly understood rules. While post publication modification or clarification of rules may be necessary, fairness dictates that the rules be as well considered and stable as possible. Given the enthusiasm for the program, and anxiety about meeting what are sure to be aggressive timelines, there is a natural tendency to act based on anticipated NTIA criteria, assume that pre-existing programs fully conform with ARRA/NTIA requirements, or apply a BTOP gloss to a pre-existing process. No project should benefit from affiliation with a pre-existing program, and no weight should be given to an evaluative process that pre-dates the NTIA's issuance of final rules for a given round of funding. All potential proposers and interested parties should recognize that any preparation done prior to the issuance of final rules is at their own risk.

The phased approach proposed by the NTIA will allow the NTIA to learn from early projects before funding those in later stages. The phased approach will only be meaningful if there is an equitable plan for disbursing funds in each of the phases. San Francisco cautions against issuing rules prior to a reasonable consideration of the comments in this proceeding. Issuing rules early, only to have them substantially revised prior to the initial round of funding, would cause confusion and a muddled set of proposals.

San Francisco believes each project must include a plausible project plan that can be put in motion as soon as a grant is in place. This project plan will include the relevant timelines and milestones for each project. The plan should document that necessary partners are committed to the project and that the proposing party understands the required authority necessary to complete the project. For example, an infrastructure project proponent would need to demonstrate that the proposing party has the authority to install the proposed facilities, such as radio facilities and conduit, or is reasonably prepared to obtain this authority. This will require familiarity with local land use and right of way regulation that may be relevant.

XI. ANSWER TO QUESTION 11: IN THE CONTEXT OF THE ARRA WASTE IS THE FAILURE TO EXECUTE INNOVATIVE PROJECTS

Wasteful or fraudulent spending should be defined as spending outside the scope of the proposed project. A project should be considered wasteful if resources are not used in support of an approved project plan; not because they take innovative risks that do not result in immediate success.

San Francisco believes that the BTOP is intended to fund innovation in broadband. The real waste would be to use these funds for mundane projects that represent more of the same or merely incremental increases in broadband service. Innovation implies risk and means that a project could be well executed, but not achieve the desired objective. The NTIA should only de-obligate projects if BTOP funds are being spent outside of the intended scope, or the project is not being pursued according to the approved project schedule. However, the NTIA must also be patient with innovative projects; the more ambitious a project, the greater the likelihood that it will encounter unanticipated impediments or that benefits will lag expectations. It would be counterproductive to prematurely de-obligate projects that are being vigorously pursued.

XII. ANSWER TO QUESTIONS 13A AND 13B: "UNSERVED AREAS" SHOULD BE DEFINED AS AREAS WHERE BROADBAND IS UNAVAILABLE; "UNDERSERVED AREAS" SHOULD BE DEFINED AS AREAS WHERE ADOPTION RATES ARE LOW; AND "BROADBAND" SHOULD BE DEFINED TO REFLECT BOTH A MEASURE OF CURRENT OFFERINGS AND A GOAL FOR FUNDED PROJECTS.

In defining "broadband," "unserved areas," and "underserved areas", the NTIA must rely both on how these terms function in the ARRA as well as an understanding of why broadband access is insufficient.[3] The ARRA uses the term "unserved" to identify areas where broadband access is insufficient because it is unavailable, as is the case in certain isolated rural communities. The ARRA uses the term "underserved" to identify areas where broadband access is insufficient because adoption is below community norms.

[3] Section 6001(b)(3) identifies one of the purposes of the BTOP program as providing support to institutions, such as schools, libraries, medical and healthcare providers and other organizations that facilitate greater use of broadband by vulnerable populations and certain job creating strategic facilities. Because of this special designation, proposals to support these institutions do not also need to demonstrate that they serve "unserved" and "underserved" areas.

In defining the grant opportunity for "underserved" areas, the ARRA recognizes that these areas may already receive broadband service, but that the BTOP is intended to improve this service. Whether an area or population is "underserved" is not a function of transmission speed, but of adoption rates. The definition of "underserved" should refer to a community (i.e. specific geographical area or demographic) that exhibits a significantly lower broadband adoption rate than the population at large in that region, state, or nation.

Section 6001(b)(3) identifies one of the purposes of the BTOP program as providing support to institutions, such as schools, libraries, medical and healthcare providers, organizations that facilitate greater use of broadband by vulnerable populations and certain job creating strategic facilities. Because of this special designation, proposals to support these institutions do not also need to demonstrate that they serve "unserved" and "underserved" areas.

The ARRA uses the term broadband in two senses. First, the ARRA uses the term to inventory and categorize the current communications landscape in order to identify areas that are unserved relative to an implied national standard. This first construction of broadband should be based on currently available broadband services. Second, the ARRA uses the term as a characteristic of the networks that the program will support. This second construction of broadband should represent a state of the art infrastructure that will have lasting economic benefits.

It could be argued that the entire nation is underserved compared to other industrialized nations that have much higher speed networks than the United States. However, Congress sought to use the terms "unserved areas" as a distinguishing characteristic to identify areas in the nation that are worse off than the rest with respect to broadband. Once these areas are identified, the new infrastructure funded by the BTOP program should be capable of providing advanced broadband service now and into the future. The NTIA has neither the mandate nor the resources to elevate a uniform nationwide standard for broadband services.

The BTOP instructs the NTIA to take a forward looking, aggressive approach towards broadband in terms of the capacity of networks funded through the program. The NTIA is directed to consider whether a project provides the "greatest broadband speed possible to the greatest population." Congress did not intend for BTOP projects to result only in incremental improvement in the quality of

broadband. The purpose of the program is not just to connect consumers, anchor institutions and public safety agencies, but to do so in such a way as to stimulate economic growth and job creation. (Section 6001(b)(5).)

Each BTOP funded project should represent a long-term approach toward a particular community's broadband needs. Projects need not conform to a uniform threshold speed, but rather should be supported by a sound business and technical justification.

Threshold speeds need not be rigidly symmetrical. They should represent set minimum requirements for upstream speed, while downstream speed must be equal to or greater than the threshold upstream speed. The educational and healthcare goals identified in the ARRA can only be met if there is sufficient upstream capacity for two-way, high definition video. Immersive collaborative educational tools will require high upstream capacity. Telemedicine applications allowing remote diagnosis and video medical translation will also require high upstream capacity. In addition, online services are becoming increasingly decentralized and user generated. These two way interactive video services will require a minimum of 20 mbps upstream capacity.

Affordability is critical to the definition of unserved and underserved, as well a condition of new broadband networks funded by the BTOP. If a broadband service is not affordable, it is effectively not available. San Francisco recommends a project/community specific definition of affordability. The BTOP will fund a variety of solutions to specific community needs. The value of the solution to consumers in the community, as well as the economic circumstances of the community, will vary widely. Projects funded by the BTOP must guarantee that prices will be affordable for the targeted community.

XIII. ANSWER TO QUESTION 13C: NONDISCRIMINATORY ACCESS SHOULD BE APPROACHED BOTH FROM THE PERSPECTIVE OF THE CONSUMER AND SERVICE/CONTENT PROVIDERS WHO USE THE NETWORK

San Francisco believes that the nondiscrimination and network interconnection provisions of the ARRA are meant to ensure that projects funded through the BTOP serve as a new, lasting infrastructure, not merely to meet immediate service delivery needs. The critical distinction is that rigorous nondiscrimination and interconnection provisions will allow entities other than network owners to make full use of the new infrastructure. This will make it much more likely that these

networks will spark new business opportunities in the communities they serve and act as a platform for innovation for the nation as a whole. The interconnection obligations must extend beyond the life of the grant and attach for the useable life of the infrastructure. Consumers need some assurance that service will be continue to operate as promised. Service and content producers need to know there is a stable environment or they will not develop new products for such a short period.

San Francisco believes that nondiscriminatory access should be approached both from the perspective of the consumer and service/content providers that hope to use the network. From the consumer's perspective, nondiscriminatory access means that any user can: (1) attach compatible devices to the network using standard interfaces, subject only to minimal "do-no-harm" requirements; and (2) reach any web site, post any information, provide any service, access or provide any application, without degradation, prioritization, or interference by the network operator. Each applicant must indicate how they plan to embrace this requirement, how they will inform consumers of this prerogative, and how they will deal with potential protests concerning this provision.

In addition, San Francisco believes that non-discrimination must be defined and enforced to ensure that new networks serve as a platform for competition and innovation among service and content providers. This requirement can be met through clear structural separation, whereby the network infrastructure owner agrees not to offer service directly to end-user customers or through enforceable non-discrimination provisions. Non-discriminatory access will require the BTOP funded projects to allow a physical connection at a technically feasible point. Non-discriminatory access means that requesting entities receive access on rates, terms, and conditions that do not discriminate on the basis of whether the requesting service or content provider is affiliated with the network operator. Each proposal should indicate the proposed interconnection point, a description of the mechanism for obtaining this access, and a commitment to offering this access on a non-discriminatory basis.

XIV. ANSWER TO QUESTION 14: THE NTIA SHOULD TREAT GRANTS AS A PORTFOLIO OF INNOVATIVE PROJECTS COMPOSED OF COMMON AND UNIQUE ELEMENTS BOTH OF WHICH MUST BE REPORTED

San Francisco believes that the ARRA not only establishes certain benchmark criteria for the success of funded projects, it also contemplates a diverse set of projects intended to be models of innovation. The common elements suggested in Section 6001(h)(2) are:

- Residences passed and ready to be served
- Number of residences served by a network
- Number of anchor institutions served by a network
- Broadband capacity available to residences and anchor institutions
- Broadband speeds subscribed to by residences and anchor institutions
- Installation cost per residence passed
- Number of individuals served by programs providing outreach, access equipment and support services to facilitate greater use of broadband by vulnerable populations
- The cost per unit of programs providing outreach, access, equipment and support services to vulnerable institutions.

Beyond this generic set of data, the NTIA must require more detailed information on each individual project according to the unique scope of work identified for a particular project. Each successful grant application will include milestones and metrics specific to the proposed project. The NTIA should add reporting on other milestones and metrics unique to the project. For example, a wireless project may be able to pass a number of residences, but depending on the radio frequency and customer premise equipment used and on local signal propogation characteristics, the approach may require a specific type of testing to verify outdoor and indoor coverage. The same approach would not be relevant for a fiber-based network.

XV. CONCLUSION

San Francisco respectfully requests that the NTIA consider the foregoing comments and recommendations as it crafts the rules and procedures for the BTOP grant program.

Dated: April 13, 2009

CHRIS A. VEIN
Chief Information Officer
BRIAN ROBERTS
Senior Policy Analyst
EMY TSENG
Project Director, Digital Inclusion Programs
BARRY FRASER
Telecommunications Policy Analyst
CITY AND COUNTY OF SAN FRANCISCO
DEPARTMENT OF TECHNOLOGY

By \s\
Chris A. Vein